



discussion in Westminster Hall, marked by free learning and ability, Lord Mansfield, with his great intellect, and his great industry, in a judicial manner, but in trembling obedience to the genius of the British Constitution, pronounced a decree which made the early slave a practical reality, and rendered slavery forever impossible in England. More than fifteen thousand persons, at that time held as slaves in England—four times as many as are now found in this District—stepped forth in the happiness and dignity of freemen.

With this guiding example let us not despair. The time will yet come when the host of our Fathers will be made a practical reality, and Court or Congress, in the spirit of this British judgment, will proudly declare that nowhere under the Constitution can man hold property in man. For the Republic such a decree will be the way of peace and safety. Slavery is banished from the national jurisdiction, it will cease to vex our national politics. It may linger in the States as a local institution; but it will no longer excite national animosities, when it no longer demands national support.

II. From this general review of the relations of the National Government to slavery, I pass to the consideration of the *TRIAL BY JURY* OF THE PROVISION FOR THE SURRENDER OF FUGITIVES FROM LABOR, embracing an examination of this provision in the Constitution, and especially of the recent act of Congress, and the substance thereof. And here, as I begin this discussion, let me bespeak your ear and candor. Not in prejudice, but in the light of history and of reason, let us consider this subject. The way will then be easy and the conclusion certain.

Much error arises from the exaggerated importance now attached to this provision, and from the assumptions with regard to its origin and its history. It is often asserted, that it was suggested by some special difficulty, which had become practically and extensively felt, anterior to the Constitution. But this is one of the myths or fables with which the supporters of slavery have endeavored to invest the Articles of Confederation, while provision is made for the surrender of fugitive criminals, nothing is said of fugitive slaves or servants, and there is no evidence in any quarter, until after the National Convention, of any hardship or solicitude on this account. No previous voice was heard to express desire for any provision on the subject. The story to the contrary is a modern fiction.

I put aside as equally false the common saying that this provision was one of the original compromises of the Constitution and an essential condition of Union. Though sanctioned by eminent statesmen, and though it is found that this statement has been hastily made, without any support in the records of the Convention, the only authentic evidence of the compromises: nor will it be easy to find any authority for the statement, that the compromise, speech, published letter or pamphlet of any kind. It is true that there were compromises at the formation of the Constitution, which was the subject of anxious debate; but this was not of them.

There was a compromise between the small and large States, by which equality was secured to all the States in the Senate. There was another compromise, finally carried, under threat from the South, and which the New England members, by which the Slave States were allowed Representatives according to the whole number of free persons, and "three-fifths of all other persons," thus securing political power on account of their slave population, that direct taxes should be apportioned in the same way. Direct taxes have been imposed at only four brief intervals. The political power has been constant, and all the States send twenty-one members to the other House.

There was a third compromise, which need not be mentioned without shame. It was that hateful bargain by which Congress were restrained until 1808 from the prohibition of the foreign slave trade, thus securing down to that period, toleration for crime. This was pertinaciously pressed by the South, even to the extent of an absolute restraint on Congress. John Rutledge said: "If the Convention of the North, Carolina, and Georgia, will ever agree to this plan [the Federal Constitution] unless their right to import slaves be secured, the expectation is vain. The people of those States will never be satisfied." Mr. Pinckney said: "South Carolina can never accept the plan [of the Constitution] if it prohibits the slave trade." Charles Cotesworth Pinckney "thought himself bound to declare candidly that he did not think South Carolina would stop her importation of slaves in any form." The effrontery of the slaveholders was matched by the effrontery of the Eastern members, who yielded again. Luther Martin, the eminent member of the Convention, in his contemporary address to the Legislature of Maryland, has described the compromise: "I found," he says, "that the Eastern members, notwithstanding their aversion to slavery, were very willing to indulge the Southern States, at least with a temporary liberty to prosecute the trade, provided the Southern States would in their turn grant them the right of navigation on the coast." The bargain was struck, and at this price the Southern States gained the detestable indulgence. At a subsequent time Congress passed a law against piracy, and thus, by solemn legislative act, adjudged this compromise to be felonious and wicked.

Such are the three chief original compromises of the Constitution and essential conditions of Union. The case of fugitives from labor is not of these. During the Convention, it was not in any way associated with these. Nor is there any evidence, from the records of this time, that the provision on fugitives was regarded with any peculiar interest. As its absence from the Articles of Confederation had not been the occasion of any serious or desire, nor did it enter into the original plans of the Constitution. It was introduced at a late period of the Convention, and with very little and most casual discussion, adopted. A few facts will show how unfounded are the recent assumptions.

The National Convention was convoked to meet at Philadelphia on the second Monday in May, 1787. Several members appeared at this time; but, mainly, they were not being represented, those present adjourned from day to day until the 25th, when the Convention was organized by the choice of George Washington, as President. On the 26th, a few brief resolutions and orders were adopted. On the next day they commenced their great work.

On this day Edmund Randolph, of slaveholding Virginia, laid before the Convention a plan for a new Constitution, and proposed a plan for the establishment of a new National Government. Here was no allusion to fugitive slaves.

On the same day, Charles Pinckney, of slaveholding South Carolina, laid before the Convention what is called "a draft of a Federal Government, to be agreed upon between the free and independent States of America," an elaborate paper, marked by consummate minuteness of detail. Here are provisions, borrowed from the Articles of Confederation, securing to citizens of each State equal privileges in the several States; giving full faith and credit to the public records of the States; and ordering the surrender of fugitives from justice. But this draft, though from the flaming guardian of the slave-interest, contained no allusion to fugitive slaves.

On the course of the Convention other plans were brought forward: on the 15th of June a series of eleven propositions by Mr. Patterson, of New Jersey, "so as to render the Federal Government more perfect, and to secure the government, and the preservation of the Union;" on the 18th of June, eleven propositions by Mr. Hamilton, of New York, "containing his views of a suitable plan of Government for the United States;" and on the 19th June, Mr. Randolph's resolutions, originally offered on the 29th May, "as altered, amended, and agreed to in Committee of the Whole House."

On the 26th, twenty-three resolutions, already adopted on different days in the Convention, were referred to a "Committee of Detail," to be reduced to the form of a Constitution. On the 8th August, this committee reported the finished draft of a Constitution. And yet in all these resolutions, plans, and drafts, *not a word*, proceeding from eminent members and from able committees, contains no allusion made to fugitive slaves. For three months the Convention was in session, and not a word uttered on this subject.

At last, on the 28th August, the Convention was drawing to a close, and the consideration of the article providing for the privi-

leges of citizens in different States, we meet the reference to this matter, in words worthy of note: "Gen. (Charles Cotesworth) Pinckney was not satisfied with it. He SERMED to wish some provision should be included in favor of property in slaves, and he made no proposition. Unwilling to shock the Convention, and uncertain in his own mind, he only seemed to wish such a provision. In this vague expression of a vague desire this idea first appeared." In this modest, hesitating phrase is the germ of the audacious, unbecoming Slave Act. Here is the little vapor, which has since swollen, as in the Arabian tale, to the power and dimensions of a giant. The next article, discrimination, provided for the surrender of fugitives from justice. Mr. Butler and Mr. Charles Pinckney, both from South Carolina, now moved openly to require "fugitive slaves and servants to be delivered up to their owners." Here was no disguise. With Hamilton it was now said in spirit—

"Seems, madam, nay, it is; I know not seems. But the very boldness of the effort drew attention and opposition. Mr. Wilson, of Pennsylvania, at once objected. 'This is the Executive of the State to do it at the public expense.' Mr. Sherman, of Connecticut, 'saw no more propriety in the public seeing and surrendering a slave or servant than a horse.' Under the pressure of these objections the offensive proposition was quietly withdrawn. The article for the surrender of criminals was then adopted. On the next day, August 29th, profiting by the suggestions already made, but not by the opposition, a proposition substantially like that now found in the Constitution—not directly for the surrender of 'fugitive slaves' as originally proposed, but 'fugitives from service or labor,' was unanimously adopted.

The provision, which showed itself thus tardily and so was slightly noticed in the National Convention, was neglected in much of the subsequent discussion before the people. In the Conventions of South Carolina, North Carolina, and Virginia, it was commended as securing important rights, though on this point there was a different opinion. In the Virginia Convention, an eminent character, Mr. George Mason, with others, expressly declared that there was 'no security of property coming within this section.' In the other Conventions it was disregarded, while the Convention, Massachusetts, which was the only one exhibiting peculiar sensitiveness as any responsibility for slavery, seemed to view it with unconcern. The Federalist, (No. 42), in its classification of the powers of Congress, describes as granted to Congress as those 'which will provide for the harmony and proper intercourse among the States,' and therein speaks of the power over public records, standing next to the power to regulate commerce, and to regulate labor, but it fails to recognize the law among the means of promoting that 'harmony and proper intercourse'; nor does it anywhere allude to the provision.

The influence which had thus far attended this subject, as continued. The earliest act of Congress, passed in 1793, drew little attention. It was not originally suggested by any difficulty or anxiety touching fugitives from labor, but it failed to recognize the law among the means of promoting that 'harmony and proper intercourse'; nor does it anywhere allude to the provision.

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There was no evidence that fugitives were often seized under this act. The first complaint inquired we learn that twenty-six years elapsed before a single slave was surrendered under its free State. It is certain that, in a case at Boston, towards the close of the last century, illustrated by John Quincy Adams, the crowd about the magistrate at the examination quietly and spontaneously opened a way for the fugitive, and thus the Act failed to be executed. It is also certain that, in Vermont, at the beginning of the century, a Judge of the Supreme Court of this State, on application for the surrender of an alleged slave, accompanied by documentary evidence, refused to comply with the order, and a *Bill of Sale* from the *Albany*. But even these cases passed without public comment.

In 1801, the subject was introduced into the House of Representatives by an effort for another act, on the subject of the reclaiming of persons and property, escaping from one State to another," was introduced into the House of Representatives by Mr. Pindall, of Virginia, was considered for several days in Committee of the Whole, and was passed by a majority of 10. In the Senate, after much attention and warm debate, it was also passed with amendments. But on its return to the House for the adoption of the amendments, it was dropped. The effect of this discussion, and the subject, has thus far been unnoticed, is chiefly remarkable as the earliest recorded evidence of the unwarrantable assertion, now so common, that this provision was originally of vital importance to the peace and harmony of the country.

At last, in 1850, we have another Act, passed by both Houses of Congress and approved by the President, familiarly known as the Fugitive Slave Act. As I read this statute, I am filled with painful emotions. The mastery sublimity with which it is drawn, might challenge admiration, if exerted for a benevolent purpose; but in an age of sensibility and refinement, a masterpiece of hypocrisy and skill, and apt, cannot be regarded without horror. Sir, in the name of the Constitution which it violates; of my country which it dishonors; of the humanity which it degrades; of the rights which it offends, I arraign this enactment, and now hold it up to the judgment of the Senate and the world. Again I shrink from no responsibility. I may seem to stand alone; but all the patriots of history, of the Fathers of the Republic, are with me. Sir, there is no attribute of God which does not unite against this Act.

But I am to regard it now chiefly as an instrument of a Constitution. And here, in its origin, it is a masterpiece of hypocrisy and skill, and apt, cannot be regarded without horror. Sir, in the name of the Constitution which it violates; of my country which it dishonors; of the humanity which it degrades; of the rights which it offends, I arraign this enactment, and now hold it up to the judgment of the Senate and the world. Again I shrink from no responsibility. I may seem to stand alone; but all the patriots of history, of the Fathers of the Republic, are with me. Sir, there is no attribute of God which does not unite against this Act.

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It commits this great question—not to a solemn trial; but to summary proceedings. It commits this question—not to one of the high tribunals of the land—but to the unaided judgment of a single petty magistrate. It commits this question to a magistrate, appointed not by the President with the consent of the Senate, but by the Court; holding his office, not during good behavior, but merely during the pleasure of the Court; and receiving a regular salary, but fees according to each individual case.

It authorizes judgment on *ex parte* evidence, by affidavits, without the sanction of cross-examination, and without the right of the accused to be heard by the Court.

It denies the writ of Habeas Corpus, ever known as the Palladium of the citizen.

Contrary to the declared purposes of the framers of the Constitution, it sends the fugitive back to the public expense.

Adding meanness to the violation of the Constitution, it bribes the Commissioner by a double fee to pronounce against freedom. If he does so, a man to slavery, the reward is ten dollars; but, if he sends him to freedom, his fee is only five dollars.

The Constitution expressly secures the "free exercise of religion"; but this Act visits with unrelenting penalties the faithful men and women, who may render to the fugitive that countenance, succor, and shelter, which in their conscience "religion" seems to require.

As it is for the public we that there should be an end of suits, so it is for the public we that there should be an end of suits; but this Act, exalting slavery above even this practical principle of universal justice, ordains proceedings against Freedom without any reference to lapse of time.

Glancing only at these points, and not stopping for argument, vindication, or illustration, I come at once upon the two chief radical objections to this Act, identical in principle with those brought by our Fathers against the British Stamp Act; first, that it is a usurpation of Congress of powers not granted by the Constitution, and an infraction of rights secured to the States; and, secondly, that the validity of the trial by jury must be destroyed by the Act, and a suit at common law. Either of these objections, if sustained, strikes at the very root of the Act. That it is obnoxious to both seems beyond doubt.

But here, at this stage, I encounter the difficulty, that no objection has been already foreseen by the legislation of Congress and by the decisions of the Supreme Court; that as early as 1793 Congress assumed power over this subject by an Act, which failed to secure the trial by jury, and that the validity of this Act under the Constitution has been affirmed by the Supreme Court. On examination this difficulty will disappear.

The Act of 1793 proceeded from a Congress which had already recognized the United States Bank, chartered by a previous Congress, which, though sanctioned by the Supreme Court, had been since in high quarters pronounced unconstitutional by the Supreme Court. A man had erred also as to fugitives from labor. But the very Act contains a capital error on this very subject, so declared by the Supreme Court, in pretending to vest a portion of the judicial power of the Nation in State officers. This error takes the form of an evident tautology, and is interpreted of the Constitution. I dismiss it.

The decisions of the Supreme Court are entitled to great consideration, and will not be pressed to the point of legislation, either for the memories of my youth or happy days, which I sit at the feet of this tribunal, while Mr. Marshall presided, with STORY by his side. The pressure now proceeds from the case of *Prigg vs. Pennsylvania*, (16 Peters, 539).

A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State to which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

The Congress has power to dispose of and make all needful rules and regulations respecting the territory and other property belonging to the United States; and nothing in this Constitution shall be construed as to prejudice any claims of the United States against any State.

Section 4. The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion, and on application of the Legislature, or of the Executive, (when the Legislature cannot be convened), against domestic violence.

Here is the third section immediately following the trial section of compacts, contains two specific powers, one with regard to new States, and the other with regard to the Public Domain. The first section is grouped together, while the fourth section of this same article, which is distinct in its character, is placed by itself. In the absence of all specific information, reason alone can determine why this language was used. But the conclusion is obvious, that, in the view of the Committee and of the Convention, each of these sections differs from the others. The first contains a compact with two of which were confessedly simple compacts, in the Articles of Confederation, *in which*, unchanged in language, the same compact was repeated. The second is a two-fold grant of power to Congress, without any compact. The fourth is neither power nor compact merely, nor both united, but a solemn injunction upon the National Government to perform a duty, which, in the view of the framers of the Constitution were wise and careful men, who had a reason for what they did and who understood the language which they employed. They did not, after discussion, incorporate into the Constitution a pernicious provision; nor did they without discussion adopt the peculiar arrangement in which it appears. In addition to the record compact, the express grant of power, they inserted one which was not to be inserted, but their conviction, that without an express grant, it would not exist. But if an express grant was necessary in this case, it was equally necessary in all the others. Especially in the case of the Public Domain, the grant of power, which is of an odious character, was it necessary in the case of fugitives from labor. In abstaining from any such grant, and, in grouping the bare compact with other similar compacts, separate from the rest, the framers of the Constitution manifestly testified their purpose. They not only decline all addition of any such power to the compact, but to render misapprehension impossible, to make assurance doubly sure, to exclude any contrary conclusion, they punctiliously arrange the clauses, on the principle of *non est*, so as to distinguish all the grants of power, but especially to make the grant of power to Congress, in the case of fugitives from labor, stand forth in the front by itself, severed from the mere naked compacts with which it was originally associated.

The records of the Convention show that the framers of the Constitution were not in any doubt as to the nature of the powers in certain cases, and, on consideration, most jealously granted them. A closing example will strengthen the argument. Congress is expressly empowered "to establish a uniform system of Bankruptcy, throughout the United States." Without this provision these two subjects would have been within the control of the States, the Nation having no power to interfere with the property of its citizens. Now, instead of the existing compact on fugitives from labor, it would have been easy, had any such desire prevailed, to add this case to the clause on Naturalization and Bankruptcy, and to group it with the other grants of power, as a grant of power to Congress, and to make it stand forth in the front by itself, severed from the mere naked compacts with which it was originally associated.

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further proposition, *that a power* "to determine the proof and effect of such acts, records, and proceedings." Amidst all these efforts to associate a power with this compact, it is clear that the framers of the Constitution were not in any doubt as to the nature of the powers in certain cases, and, on consideration, most jealously granted them. A closing example will strengthen the argument. Congress is expressly empowered "to establish a uniform system of Bankruptcy, throughout the United States." Without this provision these two subjects would have been within the control of the States, the Nation having no power to interfere with the property of its citizens. Now, instead of the existing compact on fugitives from labor, it would have been easy, had any such desire prevailed, to add this case to the clause on Naturalization and Bankruptcy, and to group it with the other grants of power, as a grant of power to Congress, and to make it stand forth in the front by itself, severed from the mere naked compacts with which it was originally associated.

The compact regarding public records, referred to a committee, on which were Mr. Randolph and Mr. Wilson, with John Rutledge, of South Carolina, as chairman. After several days, they reported the compact with a power in Congress to prescribe by general laws the manner in which such records shall be proved. A discussion ensued, in which Mr. Randolph complained that the "definition of the powers of the Government was so loose as to give it opportunities for usurpation in their own hands. He was for not going further than the report, which enables the Legislature to provide for the effect of judgments." The clause of compact with the power attached was then adopted, and the clause of the Constitution, in presence of this solicitude for the preservation of "State powers," even while considering a proposition for an express power, and also of the evident statement of Mr. Randolph, that he was for not going further than the report, which enables the Legislature to provide for the effect of judgments." The clause of compact with the power attached was then adopted, and the clause of the Constitution, in presence of this solicitude for the preservation of "State powers," even while considering a proposition for an express power, and also of the evident statement of Mr. Randolph, that he was for not going further than the report, which enables the Legislature to provide for the effect of judgments." 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